

## Water Division

### **TRIBAL CONSULTATION AND COORDINATION**

#### **NPDES PERMITS**

##### **Status of New Mexico NPDES Permits**

During 2016, EPA Region 6 may be working on several NPDES permits in New Mexico located on or in proximity upstream to potentially affected Tribes: Roca Honda Resources Uranium Mine; Los Alamos National Laboratory-Stormwater; Bernalillo WWTP; Rio Rancho WWTPs #2 and #3; Los Alamos County (White Rock) WWTP; Los Alamos County - Bayo WWTP; Farmington WWTP; Santa Fe (Airport Rd) WWTP; Resurrection Mining; general permits for storm water associated with Construction Activities (CGP) (one for discharges on Indian Country and one for non-tribal lands); and a general permit for Municipal Separate Storm Sewer Systems (MS4) in New Mexico other than in the Albuquerque Urbanized Area-primarily for those in the Santa Fe, Las Cruces, El Paso, Los Lunas, and Farmington areas. Affected tribes will receive copies of the draft permits at the time of proposal for review during the public comment period or CWA Section 401 certification as appropriate. Tribal consultation will be available to the affected tribes. *Brent Larsen, 214-665-7523*

##### **Los Alamos County Municipal Separate Storm Sewer (MS4) Designation Petition**

EPA proposed to designate portions of Los Alamos County as a municipal separate storm sewer system (MS4), which establishes requirements to reduce pollution carried by storm water run-off and will help restore waters in the area that are too polluted. The proposed designation is in response to a petition filed by Amigos Bravos for a determination that storm water discharges in Los Alamos County are contributing to violations of water quality standards in certain impaired waters and therefore, require a discharge permit and designation as an MS4. After review of the petition, information provided by LANL and Los Alamos County, and the state's water quality assessment, EPA made a preliminary determination that stormwater discharges on Los Alamos National Lab (LANL) property and urban portions of Los Alamos County result in exceedances of state water quality standards.. The proposal was published in the Federal Register on March 17, 2015, and the public comment period, which had been extended to a total of 90 days, ended June 15, 2015. A final decision is expected Spring 2016, and if decision to designate, development of a permit(s) would follow. *Nasim Jahan 214-665-7522*

##### **Los Alamos National Laboratory (LANL) NPDES Permit**

EPA Region 6 proposed reissuance of the NPDES permit for stormwater discharges from Los Alamos National Laboratory in Los Alamos, New Mexico in March 2015 and the extended public comment period ended June 25, 2015. The individual storm water permit regulates storm water runoff from about 400 Solid Waste Management Units (SWMUs) and Areas of Concern. LANL has installed over 1000 BMPs to eliminate or mitigate runoff from those sites. The current permit has been administratively continued. EPA has been working with stakeholders including permittees, environmental/citizens groups and New Mexico Environment Department over the last year in the development of permit conditions. EPA held a public meeting prior on the proposal in Los Alamos on May 6, 2015. Final action on the permit is expected Spring 2016. *Isaac Chen 214-665-7364*

## **UNDERGROUND INJECTION CONTROL**

### **Induced Seismicity**

Over the last several years, there have been abrupt increases in earthquakes in some oil and gas production areas. These areas include Arkansas, Kansas, Oklahoma, and Texas, as well as other oil and gas producing states. Of particular note is a dramatic increase in both the numbers of earthquakes in Oklahoma and Kansas, along with their magnitudes. EPA finalized the Underground Injection Control (UIC) National Technical Workgroup (NTW) report, *Minimizing and Managing Potential Impacts of Injection-Induced Seismicity from Class II Disposal Wells: Practical Approaches*. This report was developed cooperatively with state members of the workgroup to protect underground sources of drinking water and was released as final in February 2015. Since release of the report, EPA Region 6 has been providing focused technical support to the Oklahoma Corporation Commission (OCC) in its efforts to address potential induced seismicity. The OCC has rules in place to require oil and gas producers to cease or reduce the injection of wastes into geologic formations if there is a seismic event of Magnitude 4 or greater, without citing cause. Due to continued increases in the number of larger quakes, OCC recently adopted a larger scale regional approach of injection volume reductions. The Region closely monitors seismic trends in Oklahoma and has expressed concern over the upward trend in Magnitudes. The Region agrees that volume restrictions over a larger area are needed.

***Philip Dellinger, 214-665-8324***

## **TRIBAL FUNDING**

### **State Revolving Funds Tribal Set-Asides**

The Clean Water Indian Set Aside (CWISA) and the Drinking Water Tribal Set Aside (DWTSA) are in the early stages of the FY 2016 award process. The Region's 2016 CWISA program will receive an estimated \$2,544,401. This represents a slight decrease from the FY 2015 final allotment totaling \$2,554,934. Note... "FY16 EPA CWISA was funded at \$30M, or about 2.15% of the CWSRF due to a new funding floor that Congress enacted in FY16". The purpose of the funding floor was to ensure sufficient funds were allotted to Tribes in light of the declining CWSRF annual Appropriations. The Region's 2016 DWTSA program will receive an estimated \$1,766,000. This is an increase from the FY 2015 final allotment of \$1,684,500. Note ... "DWTSA has a new \$20M funding floor which raised DWTSA funding from an otherwise \$17.1M". The purpose of the funding floor was to ensure sufficient funds were allotted to Tribes in light of the declining DWSRF annual Appropriations. EPA R6 works with three Indian Health Service offices; Albuquerque, Oklahoma City, and Nashville. The Indian Health Service offices, in conjunction with EPA Region 6's Drinking Water staff are presently prioritizing which tribes will receive FY2016 funding. We anticipate notifying the successful Tribal recipients of the projects selected and the associated CWISA and/or DWTSA funding by late April 2016.

***Maurice Rawls, 214-665-8049, Dena Hurst, 214-665-7283***

### **Clean Water Act (CWA) Section 319 Funding**

EPA will be awarding a total of \$450,000 in Fiscal Year (FY) 2017 CWA Section 319(h) funding. Additionally, Quapaw and Peoria are being considered for National CWA Section 319

Competitive Funding. Projects are managed by the Assistance Programs Branch of the Water Division.

*Curry Jones, 214-665-6793*

### **Clean Water Act (CWA) Section 106 Funding**

EPA Headquarters has allocated \$3,712,000 in CWA Section 106 Water Quality Monitoring Program grants for forty-nine tribes in EPA Region 6. The funding opportunity announcement was released in mid-December, and workplans and budgets were due in Grants.gov by March 11, 2016. These new projects will be managed by the Assistance Programs Branch of the Water Division.

*Curry Jones, 214-665-6793*

## **TREATMENT-IN-THE-SAME-MANNER-AS-A-STATE FOR GRANT PROGRAMS**

### **TAS Deadline for Clean Water Act Section 319(h) and 106**

The EPA Region 6 deadline date for submitting applications for TAS for FY 2017 CWA Section 319(h) funding will be April 30, 2016.

*Samuel Reynolds, 214-665-6682*

### **Citizen Potawatomi Nation TAS for Clean Water Act Section 319(h)**

The Citizen Potawatomi Nation submitted an application in September 2014 for treatment in the same manner as a state (TAS) for the CWA Section 319 nonpoint source program. The review of the application has taken longer than anticipated but should be completed within the next few months. The EPA water quality team fully expects to approve Citizen Potawatomi Nation's CWA Section 319 TAS in time for FY 2017 funding.

*Samuel Reynolds, 214-665-6682*

### **Caddo Nation TAS for Clean Water Act Section 106**

Caddo Nation of Oklahoma submitted an application in January 2016 for treatment in the same manner as a state (TAS) for CWA Section 106. The review of the application is currently underway and will be completed by October 2016.

*Samuel Reynolds, 214-665-6682*

## **TREATMENT-IN-THE-SAME-MANNER-AS-A-STATE FOR REGULATORY PROGRAMS**

### **Treatment in the Same Manner as a State (TAS) Determinations for Clean Water Act §303(c) and §401**

Region 6 is reviewing two applications for treatment in the same manner as a state (TAS) for the Clean Water Act (CWA) water quality standards (§303(c)) and water quality certification (§401) programs. The Citizen Potawatomi Nation and the Pueblo of Laguna each submitted TAS applications in September 2014. Approval of a TAS application means that the Indian tribe is eligible to administer the water quality standards program under CWA §303(c), and is likewise eligible for purposes of certification under CWA §401. For the Citizen Potawatomi Nation's request, EPA is currently preparing for the next step in the TAS review process which will include notification to appropriate governmental entities and seeking comments on CPN's

assertion of authority to regulate the quality of tribal waters identified in the application. For the Pueblo of Laguna's request, EPA provided initial review comments to the Tribe on March 1, 2016, which included requests for clarification and additional information. Region 6 is following the review process outlined in Attachment A of EPA's 2008 "TAS Strategy" to evaluate both TAS applications for the regulatory requirements in 40 CFR §131.8 (federal recognition, capability to manage federal programs, demonstration of substantial government duties, legal authority and jurisdiction over water resources). *Diane Evans, 214-665-6677; Tina Arnold, 214-665-2709; Jay Przyborski, 214-665-6605*

### **Reinterpretation of a Clean Water Act Provision Regarding Tribal Eligibility to Administer Regulatory Programs**

In 2015, EPA proposed a reinterpretation of Clean Water Act (CWA) §518 as a delegation by Congress of authority to eligible tribes to administer CWA regulatory programs. EPA is completing its review of comments on the proposed rule and plans to issue a final interpretative rule in the upcoming months. This reinterpretation will replace EPA's current interpretation that applicant tribes need to demonstrate their inherent regulatory authority. All other tribal eligibility requirements established in the CWA and EPA's regulations will remain in place. The CWA §106 and §319 programs will not be affected by this reinterpretation, since a demonstration of regulatory jurisdiction is not required for these programs. Additional information is available at <http://www2.epa.gov/wqs-tech/proposed-rule-revised-interpretation-clean-water-act-tribal-provision> and in the regulatory docket at <http://www.regulations.gov/#!docketDetail;D=EPA-HQ-OW-2014-0461>. *Diane Evans, 214-665-6677*

### **Rulemaking for the Treatment in a Similar Manner as a State for Clean Water Act**

**303(d) Listing and TMDL Programs** – Under the authority of CWA Section 518(e), the EPA Office of Water (OW) has commenced a Tier 3 Rulemaking to promulgate a rule to establish a regulatory process for eligible tribes to obtain authority to identify impaired waters on their reservations and to establish TMDLs under the Clean Water Act, with a goal of improving water quality. EPA proposed the CWA 303(d) TAS Rule on January 19, 2016. See 81 FR 2791. The 60-day public comment period and the Tribal consultation and coordination process will end on March 21<sup>st</sup>. Upon review and analysis of comments received, EPA could publish a final rule in mid to late 2016. *Tina Arnold, ORC, 214-665-2709*

## **CWA REGULATIONS**

### **Baseline Water Quality Standards**

In August 2015, EPA initiated pre-rulemaking consultation and coordination with Indian tribes to explore an action that would establish federally-promulgated baseline water quality standards (WQS) for waters on Indian reservations and tribal trust lands that do not have EPA-approved WQS effective under the Clean Water Act. (Note: off-reservation allotment lands for individual members would not be covered, due to difficulties in identifying these parcels with certainty in the near term.) An EPA workgroup has reviewed input from the pre-rulemaking tribal consultation and coordination process, including ideas developed by National Tribal Water Council members, and will move forward with another round of Tribal Consultation and Coordination in March-May 2016. In this next round, the EPA workgroup has developed

materials with more detailed information and welcomes tribal input on the baseline WQS rulemaking. At any time, a tribe and its representative(s) may request alternative consultation arrangements with EPA to discuss views or concerns. EPA anticipates publishing a proposal for public comment in late 2016. *Diane Evans, 214-665-6677; Tina Arnold, 214-665-2709*

### **Waters of the United States**

EPA Administrator Gina McCarthy and Assistant Secretary of the Army for Civil Works Jo-Ellen Darcy signed the Clean Water Rule, “Definition of Waters of the United States” on May 27, 2015, clarifying the types of waters that are jurisdictional under the Clean Water Act. The rule became effective on August 27, 2015, 60 days after its publication in the Federal Register on June 29, 2015. However, since the rule’s publication, numerous lawsuits have been filed challenging the regulation, and on October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the Clean Water Rule nationwide, pending further action of the court. The 6<sup>th</sup> Circuit held oral arguments on December 8, 2015, and on February 22<sup>nd</sup>, 2016, the court held that the Courts of Appeal have exclusive jurisdiction to hear the facial challenges to the Clean Water Rule. The agencies anticipate that litigation on the Clean Water Rule will continue for some time. During the stay, the EPA and the Department of the Army have resumed use of the prior regulations defining “waters of the United States” and implementation of these regulations will remain unchanged until further action is taken by the Court. More information about the rule, including information about court rulings, can be found at [www.epa.gov/cleanwaterrule](http://www.epa.gov/cleanwaterrule). *Alison Fontenot, 214-665-7482*

## Multimedia Division

### Air Programs Branch

#### TRIBAL CONSULTATION AND COORDINATION

**Treatment as a State (TAS) for the Clean Air Act (CAA):** On September 30, 2014, The Quapaw Tribe of Oklahoma (The Tribe) submitted an application for TAS for CAA authority under Section 105, Section 505(a)(2), and any additional provisions of the CAA for which no separate Tribal program is required. On, February 19, 2015, The Quapaw Tribe amended their application requesting CAA authority under Section 105, Section 505(a)(2), Section 107(d)(3), and CAA §126(a). Region 6 is continuing discussions with the Tribe to ensure all of the appropriate documentation is included in the application package, per various aspects raised during the comprehensive review that was initiated to determine the Tribe's capacity and jurisdictional boundaries which are requirements for eligibility to administer the programs sought.

Currently, four Tribes in EPA Region 6 have approved TAS for CAA authorities: The Cherokee Nation, the Pueblo of Laguna, Kaw Nation, and The Peoria Tribe of Oklahoma. *Frances Verhalen, 214-665-2172.*

**Four Corners Air Quality Oversight Group:** The Navajo Nation accepted the invitation to join the Four Corners Air Quality Oversight Group Memorandum of Understanding (MOU). EPA Region 6 also sent a letter to the Jicarilla Apache Nation inviting them to be signatory parties on the MOU, though they are not required to be a signatory and can still participate in the workgroup if they don't sign. The Four Corners Air Quality Oversight Group held its annual meeting on November 9 and 10, 2015, in Durango, Colorado. *Frances Verhalen, 214-665-2172.*

#### TRIBAL PERMITTING

##### **New Source Review Regulatory Update**

**Proposed Oil and Gas FIP on Indian Country:** On August 18, 2015, the U.S. Environmental Protection Agency (EPA) proposed a federal implementation plan (FIP) to the Federal Minor New Source Review Program in Indian Country for oil and natural gas production. The FIP proposed rules will reduce air pollution that harms public health, and clarify permitting requirements to allow safe, responsible oil and natural gas development to continue. The proposed FIP would be used instead of site-specific minor New Source Review (NSR) preconstruction permits in Indian country and would incorporate emissions limits and other requirements from six standards for oil and natural gas production, including the 2015 proposed updates to the New Source Performance Standards for the oil and natural gas industry. The rule is available at: <https://www.federalregister.gov/articles/2015/09/18/2015-21023/oil-and-natural-gas-sector-emission-standards-for-new-and-modified-sources>. Specifically, the proposed FIP would apply to new true minor sources and minor modifications at existing true minor sources in the production segment of the oil and natural gas sector throughout reservation areas in Indian



country and any other areas of Indian country for which a Tribe or EPA has demonstrated that the Tribe has jurisdiction.

On February 24, 2016, EPA finalized a portion of the above proposed federal rule to extend the deadline for oil and natural gas sources to obtain minor NSR permits in Indian country from March 2, 2016, to October 3, 2016. This deadline applies to new or modifications of existing oil and natural gas industry. The rule also extends the registration requirements when a true minor source is an oil and natural gas source, and construction commences after August 30, 2011, and before October 3, 2016. The facility must re-register this source within 90 days after the source begins operation. The Federal Register notice can be found on the following website under "Regulatory Information": <http://www3.epa.gov/air/tribal/tribalnsr.html>.

In addition, new oil and gas production facilities with NAICS codes of 211X must comply with the 2012/2013 New Source Performance Standards (77 FR 49490 & 78 FR 58416).

EPA's 2011 Tribal minor source rules in Indian country require registration of existing sources and preconstruction permits for certain smaller sources of air pollution that are new or modified after September 2, 2014, commonly found in Indian country. The rule covers new and modified "minor" sources of air pollution, and minor modifications to "major" sources. Minor sources are those that have the potential to emit a number of pollutants in amounts above the minor NSR thresholds established in the 2011 rule, but below major NSR thresholds. These thresholds vary by pollutant, and by whether the area where the source is located is designated as attainment or nonattainment for a National Ambient Air Quality Standard.

Together with existing rules for permitting major sources in areas of Indian country that currently meet clean air health standards (the Prevention of Significant Deterioration program), the 2011 Tribal NSR rule established the federal programs for issuing all pre-construction air permits in Indian country. These permit programs are similar to those being implemented by states.

As part of the NSR permit applications, an assessment of the impacts from the facility emissions to species or habitats protected by the Endangered Species Act (ESA) and which may affect National Historic Preservation Act (NHPA) areas of identified resources is required. We encourage any prospective permit applicant to contact EPA Region 6 Air Permits program in advance of submitting a permit application to discuss the ESA and NHPA requirements and type of information EPA needs to make its determinations under these acts. We historically have not proposed or issued final permits until these requirements can be satisfied and EPA can make its determination regarding the impact of the project.

Region 6 has posted the "fillable" forms for registration, minor NSR permit applications on the Region 6 website at: <http://www.epa.gov/caa-permitting/caa-permitting-epas-south-central-region>

EPA has finalized the first batch of general permits (GP) for use in Indian country for new or modified minor sources in two source categories: (1) hot mix asphalt plants and (2) stone quarrying, crushing, and screening facilities. (<https://federalregister.gov/a/2015-09739>) EPA also

finalized permits by rule (PBR) for use in Indian country for new or modified minor sources in three source categories: (1) auto body repair and miscellaneous surface coating operations; (2) gasoline dispensing facilities (GDFs), except for Indian country within the borders of California; and (3) petroleum dry cleaning facilities. This rule was effective on June 1, 2015.

EPA also proposed a second bundle of general permits for Concrete batch plants, Boilers, Stationary spark ignition engines, Stationary compression ignition engines, Graphic arts and printing operations and Sawmill facilities on July 11, 2014.

[http://www3.epa.gov/air/tribal/pdfs/miscdocs2/proposed\\_rule\\_bundle\\_2.pdf](http://www3.epa.gov/air/tribal/pdfs/miscdocs2/proposed_rule_bundle_2.pdf)

The second bundle of general permits have not been finalized yet. Please see:

<http://www3.epa.gov/air/tribal/tribalnsr.html> for rule updates.

Since the finalization of the GP and PBR, Region 6 has received some intermittent inquiries from sources regarding jurisdiction for permits and registrations under the NSR rule. Now that the GP and PBR are available, there may be an increase in the number of jurisdictional questions received. We expect to work closely with the Tribes, as needed to answer any questions and before any “final determinations” are made.

Tribes are encouraged to review training provided by the Institute for Tribal Environmental Professionals (ITEP) as well as the basic training information on the EPA website. Upon request, Region 6 can provide some assistance to Tribal permit applicants for the minor NSR permits.

### **Region 6 Tribal Permit Status:**

**Major Tribal Permits:** To date, there are 5 existing Part 71 permits and one application for a Part 71 permit in New Mexico. There are currently two pending Part 71 permit renewals for compressor stations that we are holding to process until EPA’s proposed rule for source determination/aggregation is finalized. The status of these permits can be found at:

<http://www.epa.gov/caa-permitting/part-71-operating-permits-tribal-lands-epas-south-central-region>

**Synthetic Minor Permits:** Region 6 currently has four synthetic permit applications (<http://www2.epa.gov/caa-permitting/tribal-nsr-permits-epas-south-central-region>). The Sandia Resort and Casino permit was issued on December 18, 2015. The NuStar Logistics LP located on Santo Domingo Pueblo is an asphalt and crude oil transportation terminal located on Santo Domingo Pueblo. This permit has gone to public notice via electronic public notice on EPA Region 6’s website (e-notice). Public comment period ends on March 11, 2016. We are now actively working on the New Mexico Gas Company (NMGC) compression station on Laguna Pueblo that provides additional compression when needed for transporting natural gas to the end users on Tribal and State lands. EPA Region 6 will continue implementing e-notice of its proposed permit actions. We will also provide a separate letter about a public notice/comment period at the beginning of the comment period to the Tribal Nation where the facility is located and to any Tribal Nations determined to be adjacent to where the facility is located.



**Minor NSR Sources Registration:** To date there have been approximately 144 registrations submitted, and many are from oil and gas facilities. All existing non-oil and gas facilities are still encouraged to complete the registration forms that will assist the Region in determining an accurate count of minor sources. *It should be noted that any registered source that makes a change to their source which results in a change of their operation and/or emission changes needs to re-register their facilities with EPA in accordance with 49 CFR §160(c).*

Please note that the use of Air Curtain Incinerators for the combustion of wood and brush material will require the filing of a registration form and may also require a federal permit.

Upon request, EPA Region 6 will assist Tribes in reviewing Clean Air Act permits as well as support those taking on the responsibility of permitting program phases. **Bonnie Braganza, 214-665-7340.**

## **TRIBAL FUNDING**

**FY2016 Tribal Air Funding:** In FY2016, EPA Region 6 is expected to receive approximately \$1,135,000 in federal funds to support assistance agreements under statutory provisions of the Clean Air Act Section 103 and Section 105. On December 11, 2015, the Office of Environmental Justice and Tribal Affairs (OEJTA) sent a collective email to Tribal Leaders, including a solicitation for proposals for air projects and program activities to be conducted in FY2017. As a result, in February 2016, the Region received a total of 15 proposals for \$1,767,977 in cumulative funding support.

The proposals were submitted to a review panel of technical and administrative Air Program staff. Recommendations for approval, partial approval, and non-approval of each proposal will be determined in March, then discussed with management in early April, 2016. All applicants will then be notified of their specific recommendation and the basis for that recommendation, via email, by May 2, 2016.

Email notifications will also indicate the Air Section's deadline for submission of formal applications, via Grants.gov, by mid-June. All awards will be finalized by September 30, 2016.

Note: The Tribal Air Guidance manual, Protecting Tribal Air Quality Options and Opportunities, is available to Region 6 Tribes as a tool to assist in project and grant proposal development for future Tribal Air funding opportunities. For referencing purposes, the guidance document is available on OEJTA's website at: <http://www.epa.gov/tribal/region-6-tribal-program>. **Aunjaneè Gautreaux, 214-665-7127.**

## **CURRENT AND UPCOMING REGULATIONS**

**Designations under the 2015 Ozone Standard:** On October 1, 2015, the EPA strengthened the National Ambient Air Quality Standard (NAAQS) for ground-level ozone to 70 parts per billion (ppb), based on extensive scientific evidence about ozone's effects. On February 29, 2016, the EPA sent letters to the Tribes, inviting them to participate in the designations process and to offer consultation. As required by the Clean Air Act (CAA), the EPA anticipates making

designations under the revised standards by October 1, 2017 and those designations likely will be based on 2014-2016 air quality data. Tribes are invited to submit to EPA their recommendations for area designations within their jurisdictional boundaries. Based on preliminary ozone monitoring data for 2013 to 2015, none of the Tribal monitors within Region 6 are violating the new standard. The EPA plans to host a webinar on March 23, 2016 from 2-3:30 pm EDT for state and Tribal air agencies to summarize the guidance and demonstrate the Ozone Designations Mapping Tool. The webinar URL is <https://epawebconferencing.acms.com/ozonemap>. This mapping tool will assist air agencies in developing their area designation and nonattainment boundary recommendations and will provide the relevant data to facilitate the analyses. We will make the Ozone Designations Mapping Tool available on the ozone designations website. For more information, <https://www.epa.gov/ozone-designations>. **Mary Stanton, 214-665-8377.**

**Proposal to Retain the Lead Standard:** On December 19, 2014, the EPA proposed to retain, without revision, the National Ambient Air Quality Standard (NAAQS) for lead. This proposal was published in the Federal Register on January 5, 2015, and the comment period ended April 6, 2015. The EPA received numerous comments on this proposal and anticipates the final rule will be completed this winter. To view the proposal and fact sheet, please visit [www.epa.gov/airquality/lead/actions.html](http://www.epa.gov/airquality/lead/actions.html). **Guy Donaldson, 214-665-7242.**

**Designations for Sulfur Dioxide:** The EPA Region 6 is currently proceeding with designations for the 2010 sulfur dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS) in four phases: 1) Existing monitoring data; 2) Consent Decree (CD) listed sources; 3) Data Requirement's Rule (DRR) air modeling pathway; 4) and air monitoring pathway for all remaining sources. The EPA is now in phase two and under a CD to designate no later than July 2, 2016, areas with newly violating monitors and areas where 68 sources with the largest SO<sub>2</sub> emissions are located. Twenty of these CD sources are located in Region 6.

On February 16, 2015, the EPA sent out 120-day letters to States with corresponding technical support documents announcing the EPA's intended area designations for the CD sources. These areas include two power plants in Arkansas, three power plants in Louisiana, three power plants in Oklahoma, and twelve power plants in Texas. Under the CD, the EPA is required to designate areas that have monitored violations of the 2010 SO<sub>2</sub> standard based on 2013-2015 air quality data; and areas that contain any stationary source not announced for retirement that according to the EPA's Air Market Database emitted in 2012 either (a) more than 16,000 tons of SO<sub>2</sub> or (b) more than 2,600 tons of SO<sub>2</sub> and had an average emission rate of at least 0.45 lbs SO<sub>2</sub>/mmBTU.

After carefully considering state recommendations and other available technical information, the EPA intends to designate as nonattainment the following areas in Region 6:

- Portion of DeSoto Parish, Louisiana near Dolet Hills Power Station;
- The area surrounding Muskogee Generating Station in Muskogee County, Oklahoma;
- Portions of Rusk, Gregg, and Panola Counties in Texas near Martin Lake Electrical Station;
- Portion of Titus County, TX around the Monticello Steam Electric Station;
- Portions of Freestone and Anderson Counties in Texas near Big Brown Steam Electric Station;

On August 21, 2015, the EPA published the Data Requirements Rule (DRR). For phase three, the DRR sets a process and timetable for air agencies to characterize ambient air quality by either establishing ambient monitoring sites, conducting air quality modeling, or alternatively establishing a federally enforceable emission limit requiring SO<sub>2</sub> emissions to be below the 2,000 tons per year threshold. Thirty-five DRR sources were identified in Region 6 to be designated in phase three by December 31, 2017, and all remaining areas will be designated by December 31, 2020. Tribes are welcome to contact Region 6 if they are interested in consultation or participating in further discussions with EPA about the designation process. **Technical Contacts: James E. Grady (214) 665-6745 and Dayana Medina (214) 665-7241; Legal Contact: Josh Olszewski (214) 665-2178.**

**Designations and Implementation of the NAAQS for Particulate Matter:** On December 24, 2014, the EPA completed initial designations for the 2012 annual fine particle standard (also known as PM<sub>2.5</sub>) of 12.0 micrograms per cubic meter. All areas in Region 6 are designated as attainment/unclassifiable for this standard. On March 23, 2015, the EPA proposed requirements for implementing the NAAQS for PM<sub>2.5</sub> in areas that are designated nonattainment for these standards. The comment period ended on May 29, 2015 and EPA will provide a “Response to Comments” document with the final implementation rule. See [www.epa.gov/airquality/particlepollution/actions.html](http://www.epa.gov/airquality/particlepollution/actions.html) for more information. **Guy Donaldson, 214-665-7242.**

**Particulate Matter (PM) Advance:** On January 17, 2013, EPA launched its voluntary program to assist PM attainment areas, titled *PM Advance*. Similar to Ozone Advance, PM Advance is designed to help PM attainment areas take active steps to stay in attainment. Prompt or early actions to reduce PM precursors can (1) ensure continued health protection, (2) better position areas to remain in attainment, and (3) efficiently direct available resources toward actions to address PM problems quickly. To date, there are 15 state/local participants across the nation, including 4 areas in Louisiana and the Houston (TX) area, but no Tribal participants. For additional information: [www.epa.gov/ozoneadvance](http://www.epa.gov/ozoneadvance). **Carrie Paige, 214-665-6521.**

**Ozone Advance:** There are now 35 participants across the nation in the Ozone Advance program, including two Tribal participant (the Ute Indian Tribe in Utah and the Inter-Tribal Council of North Eastern Oklahoma, participating with a coalition that includes the City of Joplin (MO), the Four States Clean Air Alliance, the Joplin Area Transportation Study Organization, and the Board of Commissioners for Cherokee County, KS). Within the Region 6 area, there are 16 areas participating in Louisiana, Oklahoma and Texas. Please visit the website for updates on participant activities, program information and resources (websites, funding opportunities, documents and webinars): [www.epa.gov/ozoneadvance](http://www.epa.gov/ozoneadvance). **Carrie Paige, 214-665-6521.**

**Oklahoma Regional Haze Federal Implementation Plan (FIP):** On December 13, 2011, the EPA finalized a plan to control emissions from 6 coal fired power plants at 3 locations in Oklahoma under the Regional Haze Rule (RHR). The plants include the Oklahoma Gas and Electric (OG&E) Muskogee, OG&E Sooner, and the American Electric Power/Public Service Company of Oklahoma (AEP/PSO) Northeastern plants. This final action was published December 28, 2011, and will improve visibility at Class 1 areas in Oklahoma and Arkansas.

This action will reduce sulfur dioxide (SO<sub>2</sub>) emissions, which will also result in health benefits on Tribal lands in Oklahoma. In our December 13, 2011, final action, we did not act on whether Oklahoma satisfied the reasonable progress requirements found at section 51.308(d)(1). We stated in that action that we are not taking action on Oklahoma's submitted reasonable progress goals because we must first evaluate and act upon the Regional Haze SIP revision submitted by the State of Texas. We proposed action on the Texas submittal on December 16, 2014. See the next item (Texas and Oklahoma Regional Haze FIP) for more details.

In 2012, petitions for judicial review of our Regional Haze FIP for Oklahoma were filed by the Oklahoma Attorney General, OG&E, and AEP/PSO. Last year, AEP/PSO entered into a settlement agreement with EPA, the State of Oklahoma and the Sierra Club, which will result in equivalent reductions in emissions with an alternate plan. Specifically, AEP/PSO would initially meet specified NO<sub>x</sub> and SO<sub>2</sub> emission rates at both northeastern coal units, then in 2016 retire one of the units and install additional emissions control equipment on the remaining unit, which will ultimately be retired in 2026. Pursuant to the settlement agreement, the State of Oklahoma in June 2013, submitted a revised Regional Haze State Implementation Plan (SIP) containing a new Best Available Retrofit Technology (BART) determination for AEP/PSO Northeastern Power Station, and EPA proposed to approve the SIP revision and amend the FIP in August 2013. In February 2014, EPA issued final approval of the SIP revision and amended the FIP to remove all references to the AEP/PSO Northeastern Power Station. No appeals to our final approval of Oklahoma's regional haze SIP revision were filed.

The Oklahoma regional haze FIP remains in place for the OG&E Muskogee and Sooner plants. On May 27, 2014, the U.S. Supreme Court announced that it will not hear an appeal of the Federal District Court decision upholding EPA's regional haze FIP for Oklahoma that was filed by the Oklahoma Attorney General and OG&E. OG&E is evaluating its options for complying with the requirements of our FIP at the Muskogee and Sooner facilities. *Joe Kordzi, 214-665-7186.*

**Texas and Oklahoma Regional Haze FIP:**— On December 16, 2014, the EPA published a proposal to partially approve and partially disapprove a revision to the Texas State Implementation Plan (SIP) and to partially disapprove a revision to the Oklahoma SIP submitted in February 19, 2010, to address regional haze. This proposal also includes Federal Implementation Plans (FIPs) for Texas and Oklahoma to remedy these deficiencies. The proposed Texas FIP would implement SO<sub>2</sub> emission limits on 15 Texas coal fired power plant units, located at 8 facilities in Texas, as part of a long-term strategy for making reasonable progress at three Class I areas in Texas and Oklahoma. It also sets new Reasonable Progress Goals (RPGs) for the Big Bend, the Guadalupe Mountains and substitutes Texas' reliance on the Clean Air Interstate Rule (CAIR) to satisfy BART requirements at its EGUs with reliance on CAIR's successor, the Cross-State Air Pollution Rule (CSAPR). The Oklahoma FIP sets RPGs for the Wichita Mountains Class I areas. This action is a continuation of the December 13, 2011, Oklahoma FIP, in that it covers EPA's evaluation of Oklahoma's reasonable progress requirements EPA previously did not act upon. The comment period for this proposal ended April 20, 2015. EPA is under a consent decree to finalize its decision by December 9, 2015. *Joe Kordzi, 214-665-7186.*

**New Mexico Regional Haze Federal Implementation Plan (FIP):** On October 9, 2014, the EPA took final action approving a revised New Mexico regional haze State Implementation Plan (SIP) and withdrawing the FIP (see 79 FR 60985 and 79 FR 60978). The approved New Mexico regional haze SIP calls for the retirement of two units at the 1,800-MW coal-fired San Juan Generating Station (SJGS) by the end of 2017. The remaining two units will be retrofitted with selective noncatalytic reduction technology in 2016. The New Mexico Public Regulation Commission (PRC) held hearings in January and recently set a hearing on the merits of Public Service Company of New Mexico's (PNM) request for a Certificate of Convenience & Necessity (CCN) for acquiring an additional 132 megawatts of Unit 4 of the San Juan Generating Station and set a deadline of July 1 for PNM to file a plan with the PRC. The PRC is expected to issue a ruling by the end of the summer on future operations, including retirement of two units at the SJGS, and the most cost-effective plan for obtaining replacement power. *Michael Feldman, 214-665-9793.*

**Oklahoma DC Circuit Decision on New Source Review (NSR) Rule - Implementation Plans in Non-Reservation Areas of Indian Country:** On January 17, 2014, the D.C. Circuit issued a decision vacating EPA's Clean Air Act (CAA) New Source Review rule for non-reservation areas of Indian country (Oklahoma Dept. of Environmental Quality (DEQ) v. EPA, 740 F.3d 185 (D.C. Cir. 2014)). The court held that states, not Tribes or EPA, have initial primary regulatory jurisdiction over non-reservation areas of Indian country for purposes of implementation plans under CAA section 110, except where an Indian Tribe or EPA has demonstrated that a Tribe has jurisdiction over such an area. Non-reservation areas of Indian country consists of Indian allotments and dependent Indian communities; these lands are believed to exist in several states, however in many cases their exact location may be uncertain.

EPA continues to evaluate the effect and implications of the court's decision and continues to actively reach out to Tribes and states for their input. At this point, the Office of Air Quality Planning and Standards (OAQPS) is seeking out information (through the Regional offices) about the location of non-reservation areas of Indian country. They are also interested in information about existing or prospective sources within non-reservation Indian country. Finally, for matters that will affect all regions, OAQPS is seeking feedback on an effective, timely approach for offering consultation to Tribes that may be affected by future state implementation plan (SIP) approvals. The Region will continue to reach out to Tribes on individual SIP actions through the RTOC calls and in some cases, through offers of formal consultation.

EPA recently learned that Oklahoma DEQ does not believe that the court's decision is limited to National Ambient Air Quality Standards (NAAQS) implementation under CAA section 110. In their view, the decision extends to all CAA programs in non-reservation areas of Indian country. Oklahoma DEQ raised this issue in comments on proposed revisions to an Oklahoma National Emission Standards for Hazardous Air Pollutants (NESHAPs) delegation. EPA is considering Oklahoma DEQ's comments and will respond in a final action in the future. *Mark Hansen, 214-665-7548 (Region 6) and Laura Bunte, 919-541-0889 (OAQPS).*

**New Mexico Regional Haze Five-Year Progress Report State Implementation Plan:** On March 14, 2014, the EPA received the five-year regional haze progress report SIP from New



Mexico. The EPA proposed approval of the plan on October 23 2015. We are currently evaluating comments and expect to finalize action in May, 2016. ***Guy Donaldson, 214-665-7242.***

## **AIR MONITORING**

**Technical Systems Audit:** EPA completed the technical system audit for the Delaware Nation in October 2015. The audit team conducted an on-site audit, interviewed technical staff, and reviewed the procedures and protocols for collecting, analyzing, and qualifying air monitoring data for ozone. ***Kara Allen, 214-665-7333.***

**Oil & Gas Air Monitoring:** The Alabama-Coushatta Tribe competed nationally for and were awarded an EPA Community Air Toxics monitoring project grant. The project is for real-time monitoring of hazardous air pollutants such as benzene, toluene, ethylbenzene, xylenes and aldehydes in the vicinity of oil and gas sites. The Tribe is working with the Houston Advanced Research Center to deploy the monitoring system once a week for three years. ***Ruben Casso, 214-665-6763.***

## **CLIMATE CHANGE**

**Clean Power Plan (CPP) Final Rule Update:** EPA announced the CPP Rule to cut carbon pollution from new and existing power plants on August 3, 2015, and published it (along with the proposed rule for the CPP Federal Plan/Model Rules and Trading Program for states) in the Federal Register on October 23, 2015. The 90 day comment period on proposed Federal Plan/Model Rule ended on January 21, 2016. EPA held CPP community workshops focused on Tribal communities in early December in Farmington, NM and Tuba City, AZ. Region 6 conducted a webinar for Tribes and community interest groups on December 11, 2015. EPA received nearly a million public comments by the end of the public comment period.

Three Tribes fall directly under CPP mandates: the Navajo Nation (Arizona and New Mexico), the Ute Tribe of the Uintah and Ouray (Utah), and the Fort Mojave Tribe (Nevada), which have one or more electric-generating units (EGUs) on its lands. Rules for Tribes with existing EGUs were written separately into the CPP, though they reflect the overall goal of a 32% reduction in carbon output by 2030.

The CPP would also impact “non-EGU” Tribal communities throughout the U.S. for several reasons: carbon reduction promises to at least slow the progression of climate change, which hits Tribes particularly hard as it impacts their environments, health, and cultural and spiritual well-being. A significant reduction in carbon emissions from power plants nationwide would also reduce emissions of other dangerous pollutants, including mercury and sulfur dioxide. And incentives built into the CPP would enable Tribes that are planning to develop Renewable Energy (RE) or Energy Efficiency (EE) projects to participate in the trading provisions of the final rule, thereby providing potential emission rate credits (ERCs) to states to help them meet their goals (as long as they are connected to the continental U.S. grid and meet other requirements for eligibility). This effort would benefit Tribes both environmentally and



economically—and potentially aid in their energy-sovereignty efforts—as they move toward lower-impact power generation and increase energy efficiency within their communities.

A coalition of 26 states and a coal mining company filed lawsuits opposing/challenging the CPP in October/November 2015. Those lawsuits are progressing through the U.S. Court of Appeals in Washington, DC.

On February 9, 2016, the Supreme Court *stayed* implementation and enforcement of the CPP pending judicial review. The Supreme Court’s decision was not on the merits of the rule. EPA firmly believes the CPP will be upheld when the merits are considered because the rule rests on strong scientific and legal foundations. For the states (**and Tribes**) that choose to continue to work to cut carbon pollution from power plants and seek the agency’s guidance and assistance, EPA will continue to provide tools and support.

EPA will make additional information available as necessary.

### **Key Points**

- Implementation and enforcement are on hold.
- Initial submittals (by states **and Tribes**) not required on September 6, 2016.
- EPA will continue to work with states (**and Tribes**) that want to work with us on a voluntary basis.
- For more information, please visit: [www.epa.gov/cleanpowerplan](http://www.epa.gov/cleanpowerplan)

**Mark Hansen, 214-665-7548.**

**2015 Diesel Emissions Reduction Act (DERA) Tribal Funding:** For the third year in a row, EPA is offering a stand-alone Tribal Request for Proposals (RFP) for National Clean Diesel Campaign (NCDC) grants for projects that reduced emissions from older diesel engines. Last year a Region 6 Tribe, the Pueblo of Acoma, was awarded \$82,000 for a Regional Truck Stop Electrification (TSE) Project to equip the Sky City Travel Center with 30 HVAC--equipped electrified TSE spaces. It is estimated that the project will save 76,650 gallons of diesel/year while removing over 693 tons of nitrogen oxides (NOx), fine particulate matter (PM2.5) and carbon dioxide (CO2) emissions annually. It is anticipated that the RFP will posted in late March 2016. **Gloria Vaughn, 214-665-7535.**

### **Hazardous Waste Branch**

### **TRIBAL CONSULTATION AND COORDINATION**

**Fort Wingate Depot Activity, New Mexico:** Fort Wingate Depot Activity (FWDA) closed under Base Realignment and Closure (BRAC) in 1993. Closure and post-closure is managed under a state Resource Conservation and Recovery Act (RCRA) permit for closure and post-closure, effective December 31, 2005. Investigation and remediation work continues very actively. Base size at closing was 21,131 acres. The facility is scheduled to be returned to two Tribes, the Navajo Nation and the Pueblo of Zuni. Navajo lands and communities are adjacent to the facility, and both Tribes have had historic presence there. Very early in the base closure

process the two Tribes were invited to be active participants in the process, attending the Base Closure Team (BCT) meetings and giving input; this participation continues to this day, with nine representatives of the Tribes at the latest BCT meeting.

The 2005 RCRA closure/post-closure permit issued by NMED included specific requirements for consultation with the Tribes in development of the Community Relations Plan, and prior consultation with the Tribes on work plans and reports. Posted warning signs are in English, Spanish, Zuni, and Navajo languages. Intrusive work is done in consultation with the Tribes' experts in order to preserve archeological sites, historic sites, and cultural resources.

The Army notified the stakeholders at the November 2014 BCT meeting that the FWDA project has been put on a funded, accelerated cleanup schedule, with the goal of having all major cleanup completed in 2020. This acceleration may allow transfer of the facility to the Tribes up to 10 years earlier than previously expected. Acceleration of the schedule has shortened Tribal document review times, but the Tribes have not objected to the change. *Laurie King, 214-665-6771.*

## **FACILITY SPECIFIC INFORMATION**

**Los Alamos National Laboratory Hexavalent Chromium Groundwater Plume, New Mexico:** Potassium dichromate was used in the cooling towers at some of the Los Alamos National Laboratory (LANL) power plants. The cooling water was periodically discharged to adjacent canyons. It is estimated that up to 72,000 kg of hexavalent chromium cooling water was discharged into Sandia Canyon from 1956-1972. The discharged water traveled downstream approximately 2 miles to an infiltration point in Sandia Canyon, where hexavalent chromium has contaminated the regional aquifer, which is approximately 1,000 feet below ground. LANL first discovered the groundwater plume in late 2005. In August 2015, LANL installed a groundwater monitoring well on San Ildefonso property to determine if the hexavalent chromium groundwater plume had migrated onto Pueblo property. Samples taken in September and October of 2015 from this monitoring well (SIMR-2) detected hexavalent chromium at 4 and 5 ppb (New Mexico Environment Department (NMED) standard is 50 ppb). It should be noted that the new monitoring well is actually located side gradient to the plume (the true down gradient location is on San Ildefonso sacred grounds). In May 2015, LANL submitted an Interim Measures (IM) Work Plan to NMED to address the chromium plume, which includes the extraction and treatment of the chromium contaminated groundwater. NMED requested Region 6 to have the EPA Robert S. Kerr Laboratory (located in Ada, OK) review the IM work plan for technical adequacy. On February 16, 2016, the EPA Ada Lab sent their comments to Region 6 on the review of LANL's IM Work Plan. Region 6 then immediately forwarded the comments to NMED, which in turn, sent the comments to LANL. The crux of the comments recommended that LANL initiate the components of the IM Work Plan. *Laurie King, 214-665-6771.*

**Sandia National Laboratories (SNL) Mixed Waste Landfill (MWL), New Mexico:** In November 2015, the Pueblo Isleta contacted EPA Region 6 regarding the safety and status of the MWL. EPA Region 6 held a conference call with Isleta in December 2015, to discuss their concerns. The New Mexico Environment Department (NMED) agreed to hold a briefing with

Isleta to provide the regulatory history and current status of the site. EPA expects to have another call with Isleta after they meet with NMED.

The MWL is located on Kirtland Air Force Base, five miles southeast of the Albuquerque airport. It is a 2.6-acre site which operated from 1959 to 1988 as a disposal area for low-level radioactive waste and minor amounts of mixed waste generated by SNL research facilities.

The MWL has been extensively studied and discussed. Twenty-five years of monitoring and site characterization show no evidence of groundwater contamination. Groundwater, soil, and air data shows concentrations of potential contaminants do not pose a risk to human health or the environment for current and projected future uses. Monitoring is ongoing.

In 2004, the NMED Secretary of the Environment issued a Compliance Order on Consent for the MWL. In 2005, the Secretary issued a Final Order which required fate and transport modeling, a Corrective Measures Study and Implementation Report, installation of an evapotranspiration cover, and development of a Long Term Monitoring and Maintenance Plan (LTMMP). The cover was installed in 2009 to prevent erosion and animal intrusion. The LTMMP was approved in 2014. In February 2016, the NMED Secretary issued a Final Order which affirmed that it is safest to leave the MWL waste in place, and granted status as Corrective Action Complete for a number of other sites. This Order reiterated that the LTMMP requires completion of a comprehensive review and report every five years to evaluate the effectiveness of the current remedy. The Order required expansion of the scope of the five year review to also evaluate excavation, removal and disposal of the MWL. The first review is due in 2019. The Order also required that Sandia provide NMED and the interveners all records of wastes in the MWL. *Laurie King, 214-665-6771.*

## **CURRENT AND UPCOMING REGULATIONS**

**Definition of Solid Waste (DSW) Final Rule:** The final rule went into effect on July 13, 2015. The rule revises the definition of solid waste (DSW) under the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste regulations. The DSW Rule: (1) replaces the 2008 exclusion for hazardous secondary materials being transferred to another person for reclamation (“transfer-based exclusion”) with the new DSW Verified Recycling Exclusion; (2) strengthens requirements for the 2008 exclusion for hazardous secondary materials being reclaimed under the control of the generator (“generator-controlled exclusion”); (3) revises the definition of legitimate recycling and applies it to all hazardous secondary material recycling; (4) makes revisions to variances and non-waste determinations, which are granted to facilities on a case-specific basis; and (5) codifies an exclusion for specific spent solvents being remanufactured back into commodity grade solvents (“remanufacturing exclusion”) and includes a process that allows persons to petition EPA to exclude other hazardous secondary materials from the hazardous waste regulations under the remanufacturing exclusion. EPA has concluded that the Revision of the Definition of Solid Waste may have Tribal implications. However, it will neither impose substantial direct compliance costs on Tribal governments, nor preempt tribal law. Currently, there are no facilities operating on land controlled by Tribal governments but if such facilities did locate in such areas, then this rule could have Tribal implications, to the extent

that the rule is intended to address potential adverse impacts of the 2008 DSW final rule. ***Kishor Fruitwala, 214-665-6669.***

**Hazardous Waste Generator Improvements Proposed Rule:** This proposed rule would make various changes to the hazardous waste generator regulatory program to improve its clarity and effectiveness. One improvement under consideration would consolidate all of the hazardous waste generator regulations, where appropriate, in Part 262 of Title 40 of the Code of Federal Regulations. Another possible improvement would require small and large quantity generators to include additional information on container labels to better communicate risks associated with its contents. In order to provide generators with greater flexibility in complying with the Resource Conservation and Recovery Act (RCRA) regulations, another improvement under consideration would allow generators to maintain their regulatory status even though, because of an episodic event, they moved into a higher regulatory status temporarily. This improvement would allow episodic generators to follow streamlined requirements that are fully protective of human health and the environment. There is a potential for Tribes to be impacted by the hazardous waste generator rule if they operate as a generator or have generators that operate on Tribal land. The proposed rule was published for comment in 80 FR 57918 on September 25, 2015. The original comment period was extended to December 24, 2015. Final rule publication is anticipated in September 2016 with an effective date in December 2016. ***Kishor Fruitwala, 214-665-6669.***

**Hazardous Waste (HW) Pharmaceuticals Proposed Rule:** A small portion of pharmaceuticals are regulated as hazardous waste under the Resource Conservation and Recovery Act when discarded. Healthcare (and associated) facilities that generate hazardous waste pharmaceuticals have reported having difficulties complying with the manufacturing-oriented framework of the subtitle C hazardous waste regulations for a number of reasons. First, under the current hazardous waste regulatory scheme, healthcare workers, whose primary focus is to provide care for patients, are often responsible for the implementation of the regulations. Second, a healthcare facility can have thousands of items in its formulary, making it difficult to ascertain which ones are hazardous wastes when disposed. Third, some active pharmaceutical ingredients are listed as acute hazardous wastes, which are regulated even in small amounts. To facilitate compliance and to respond to these concerns, EPA is proposing to revise the regulations to improve management and disposal of hazardous waste pharmaceuticals. The revisions are also intended to clarify regulation of a major mechanism used by healthcare facilities for management of unused and/or expired pharmaceuticals, known as reverse distribution. In 2008, the Agency proposed to address pharmaceutical hazardous waste management issues by adding them to the Universal Waste rule. Based on the adverse comments received on the 2008 Universal Waste Pharmaceutical proposal, EPA is now considering proposing healthcare facility-specific regulations for the management of hazardous waste pharmaceuticals in lieu of finalizing the universal waste proposal. Healthcare facility-specific regulations will provide a regulatory scheme that is adapted to the unique issues that hospitals, pharmacies and other healthcare-related facilities face. There are no anticipated Tribal impacts associated with the HW Pharmaceuticals rule. The proposed rule was published for comment in 80 FR 58014 on September 25, 2015. The original comment period was extended to December 24, 2015. Final rule publication is anticipated in September 2016 with an effective date in December 2016. ***Kishor Fruitwala, 214-665-6669.***

## **GRANTS**

The Office of Land and Emergency Management at EPA Headquarters annually awards a limited number of grants to Tribes under the statutory provisions of the Resource Conservation and Recovery Act, Subtitle C, Hazardous Waste Management Grant Program for Tribes. No Region 6 Tribes were selected for the FY15 grants. We do not currently have information from EPA HQ about the availability of Tribal grant funds for FY16. *Cheryl Scott, 214-665-2179.*

## **Pesticides, Toxics & Underground Storage Tanks Branch**

### **NEW AND UPCOMING REGULATIONS**

**New UST Regulations:** The U.S. Environmental Protection Agency strengthen the federal underground storage tank (UST) requirements with the publication of the new final UST regulations on July 15, 2015, with an effective date of October 13, 2015. These new regulations provide additional protections for those UST facilities on Indian land. Deadlines for requirements taking effect are October 13, 2015, for a few requirements, April 11, 2016, for others and finally October 13, 2018, for the remaining requirements.

The new regulations include: adding secondary containment requirements for new and replaced tanks and piping and adding under dispenser containment that is liquid tight on the sides and bottom; adding periodic operation and maintenance requirements for UST systems; removing deferrals for emergency generators tanks, airport hydrant systems and field- constructed tanks; and adding new release detection technologies.

*Larry Thomas, 214-665-8344.*

**Revisions to the Agricultural Worker Protection Standard (WPS):** The Environmental Protection Agency has revised the 1992 Agricultural Worker Protection Standard regulation to increase protection from pesticide exposure for agricultural workers and their families. Some of the major changes include: annual mandatory training to inform farmworkers on the required protections; expanded training to reduce take-home exposure from pesticides on work clothing; and first-time ever minimum age requirement that children under 18 are prohibited from handling pesticides. The rule continues the exemption for farm owners and their immediate family with an expanded definition of immediate family. These changes afford farmworkers similar health protections already afforded to workers in other industries while taking into account the unique working environment of many agricultural jobs. *Greg Weiler, 214-665-7564.*

**Proposed Revisions to the Certification and Training Rule for Applicators of Restricted Use Pesticides (RUPs):** On August 5, 2015, the EPA issued a proposal to revise the Certification of Pesticide Applicators rule. EPA closed the comment period on January 22, 2016. EPA is proposing changes to the rule that would improve the competency of certified applicators of RUPs by: establishing new standards for certification, such as minimum age and examination standards for commercial applicators and more specific requirements for establishing competency of private applicators; establishing a uniform national certification period for private and commercial applicators and minimum requirements for recertification programs; and establishing new certification categories to address specific high-risk application



methods. The proposed rule would also impact Tribes that operate certification programs. The impact on applicators and Tribes will vary based on the current Tribal requirements. **Greg Weiler, 214-665-7564.**

**Lead-based Paint Programs: Amendment to Jurisdiction-Specific Certification and Accreditation Requirements and Renovator Refresher Training Requirements:**

On February 17, 2016, EPA is finalizing revisions to the Lead Renovation, Repair, and Painting (RRP) rule, and the Lead-based Paint (LBP) Activities rule. The revisions are intended to improve the day-to-day function of these programs by reducing burdens to industry and EPA, and by clarifying language for training providers, while retaining the protections provided by the original rules. First, EPA modified the requirement that the renovator refresher training for individuals have a hands-on component. Second, the Agency removed jurisdiction-specific certification and accreditation requirements under the LBP Activities program in States where EPA administers the program. Previously, this program required that training providers, firms and individuals seek certification in each jurisdiction (*e.g.*, Tribal, or a State) where the organization or person wanted to work. Third, EPA added clarifying language to the requirements for training providers under both the RRP and LBP Activities programs. **Mike Adams, 214-665-6711.**

## **PROGRAM IMPLEMENTATION**

**Tribal Underground Storage Tanks (UST) Inspections:** During FY2016, EPA Region 6 will inspect 44 UST facilities operated on Tribal lands. Individual notification for these inspections is sent to the owner/operator and the Tribal environmental offices 30 days before the inspection. The operators of these facilities are provided compliance assistance during the inspections. The inspections during FY2016 will be at facilities on Tribal land at the following: Absentee Shawnee, Acoma, Alabama Coushatta, Apache Tribe of Oklahoma, Chickasaw, Chitimacha, Choctaw, Citizen Potawatomi, Coushatta, Iowa, Isleta, Laguna, Mescalero Apache, Muscogee (Creek), Picuris, San Ildefonso, Sandia, Santa Ana, Santa Clara, Santo Domingo, Seminole, and Taos.

**Greg Pashia 214-665-8439, Larry Thomas 214-665-8344, Heather Mann 817-291-9106.**

**Federal Certification of Applicators of Restricted Use Pesticides (RUP) in Indian**

**country:** On February 6, 2014, EPA issued a federal certification plan that allows the use of RUPs in Indian country by trained, tested, and certified applicators. The plan also allows EPA to regulate the sale and distribution of RUPs in Indian country. The certification requirements for RUPs help assure that RUP applicators are competent to use these hazardous pesticides as safely as possible. To date, Region 6 has processed over 50 applications from applicators in New Mexico and Oklahoma. Outreach is on-going and will continue in both states. **Greg Weiler, 214-665-7564.**

**Pesticide Safety and Integrated Pest Management in Schools in Indian Country:** Region 6 conducted a site assistance visit and evaluation of a prairie dog infestation associated with the Haak'u Day School, Sky City Elementary School, and the Acoma Community Track in the Pueblo of Acoma with NMSU Extension and ENIPC-OETA on 28 October 2015. The site assistance visit and consult was requested by the Pueblo of Acoma Governor's Office through



their Environmental Office. The community was extremely concerned about the growing infestation of prairie dogs and risks associated with various control measures including pesticides. NMSU extension staff will continue to work with the Pueblo of Acoma community in the coming months to develop a prairie dog action plan that addresses their concerns. This activity supports R6 efforts to expand the use of pesticide safety and IPM programs in K-12 schools, Indian Country, and EJ communities. **Kenneth McPhersons, 214-665-6754.**

## **TRIBAL OUTREACH AND EDUCATION**

**Indoor Air Quality (IAQ) Outreach:** The Quapaw Tribe, Comanche Nation, and Choctaw Nation, Pueblo of Cochiti all requested outreach and education material from EPA Region 6 IAQ office in order to create awareness of possible contaminants of indoor air quality in their Tribal communities. EPA provided Green and Healthy Homes strategies for home construction guidelines to prevent radon and mold. **Mark Berry, 214-665-3183.**

**Indoor Air Quality (IAQ) Outreach:** Provided online access to the National Tribal Air Association (NTAA) Tribal Indoor Air Quality Needs Assessment to all Region 6 Tribal stakeholders. Since its founding in 2002, the NTAA has been a leading voice for Tribal air quality issues, programs, and policies. With nearly 100 principal member Tribes, the NTAA's mission is to advance air quality management and policies and programs, consistent with the needs, interests, and unique legal status of American Indian Tribes and Alaskan Natives. Both environmental and housing departments are target respondents for this assessment. For more information on the NTAA, please visit [www.ntaatribalair.org](http://www.ntaatribalair.org). You can access the NTAA Indoor Air Quality Needs Assessment here: <http://goo.gl/forms/AKpDSLMEQx> **Mark Berry, 214-665-3183.**

## **GRANTS**

**Pesticides Grants:** Cooperative agreements were awarded to two Tribal consortia, the Intertribal Environmental Council (ITEC) and the Eight Northern Indian Pueblos Council (ENIPC), to assist member Tribes in building capacity to establish and maintain pesticides programs. The goal of the Tribal pesticides program is to make Tribes aware of the benefits and dangers of pesticides and the requirements for their safe use, thereby safeguarding human health and the environment. **Sheila Broadnax, 214-665-6426.**

**Lead Paint Grants:** The Cherokee Nation of Oklahoma was awarded a grant to conduct a Lead Based Paint Program. The focus of the program is maintaining the appropriate infrastructure to successfully administer and enforce the lead based paint program; provide training for lead inspectors; conduct inspections of licensed contractors engaged in lead-based activities and taking appropriate enforcement when needed. **Mike Adams, 214-665-6711.**

**Radon Grants:** The Jicarilla Apache was awarded a grant to conduct a Tribal Radon Program. The program objective is to protect Tribal members from harmful exposures to radon gas by testing homes and Tribal offices, providing training and outreach to the community. The Pueblo of Pojoaque was awarded a grant to conduct a Tribal Radon Program. The program objective is to protect Tribal members from harmful exposures to radon gas by testing homes and

Tribal offices, providing training and outreach to the community. ***George Brozowski, 214-665-8541.***

**Pollution Prevention Program Grants:** The Otoe-Missouria Tribe of Oklahoma was awarded a Pollution Prevention Program Grant to implement pollution prevention technical assistance services and/or training for businesses and support projects that utilize pollution prevention techniques to reduce and/or eliminate pollution from air, water and/or land. The projects under the grant will provide training and technical assistance for seven Tribal businesses and three departments within the Tribal Government. Topics will include Pollution Prevention, Energy Use Awareness, Energy and Water Conservation and Chemical and Hazardous Material. ***David Bond, 214-665-6431.***

## **Solid Waste**

### **TRIBAL OUTREACH AND EDUCATION**

**Region 6 and Citizen Potawatomi Nation Host Tribal Waste Characterization Workshop in Oklahoma:** On October 28, 2015, the Citizen Potawatomi Nation hosted the Region's first of two workshops to train tribes how to assess their waste stream and use the data to develop and improve their recycling programs. The training consists of classroom instruction in the morning and then an actual waste sort in the afternoon. Two dumpsters of waste were hand sorted by class participants to determine the casino and truck stop total waste volume and amount of recyclables. The 27 attendees included representatives of twelve tribes across Oklahoma. The host tribe will also be provided with a free waste characterization report from the exercise by the contractor Booz Allen Hamilton. ***Roger Hancock, 214-665-6688***

**Region 6 and Pueblo of Sandia Host Tribal Waste Characterization Workshop in New Mexico:** On November 16, 2015, the Pueblo of Sandia hosted the Region's second of two workshops to train tribes how to assess their waste stream and use the data to develop and improve their recycling programs. The training consists of classroom instruction in the morning and then an actual waste sort in the afternoon. Two dumpsters of waste were hand sorted by class participants to determine the total waste volume and amount of recyclables being thrown away from a residential area and their casino. The 26 attendees included representatives of thirteen pueblos across New Mexico. The host tribe will also be provided with a free waste characterization report from the exercise by the contractor Booz Allen Hamilton. The two trainings we completed reached a total of 50 tribal attendees from 25 tribes in Region 6. Several tribes have since indicated that they are going to do their own waste characterizations now that they have received on-the-ground training on how to do it. ***Roger Hancock, 214-665-6688***

## Compliance Assurance and Enforcement Division

Compliance Evaluation Inspections are continuing. The Region has conducted three (3) inspections so far this fiscal year to verify compliance with existing administrative orders on consent. The Region will also continue to conduct compliance inspections to evaluate systems which have persistent problems and may become subject to enforcement actions. In all circumstances, enforcement will coordinate with the Tribal Nations and Pueblos prior to inspections. We appreciate the efforts made by the Tribal Nations and Pueblos during the last five (5) years to improve compliance rates. There is only one (1) facility in the Region on the current referral list of Tribal systems for priority enforcement. ***Jerry Saunders, 214-665-6470***

## Superfund Division

### TRIBAL CONSULTATION AND COORDINATION

#### VARIOUS REMOVAL/REMEDIAL ISSUES

**Anadarko Tank Battery:** The property owner, Union Pacific (UP), mobilized response personnel and equipment on March 21, 2016 to address the five above ground storage tanks (ASTs), drums, piping and stained soils left by a former lessee. During the response, two underground storage tanks (USTs) were also found and removed. Approximately 1000 gallons were removed from the USTs and the ASTs and properly shipped for disposal. The ASTs, piping and scrap metal were recycled. Ten roll-off containers of trash and building debris were transported for landfill disposal. Approximately 100 cubic yards of contaminated soil were excavated, profiled, and properly disposed of. The various tribal partners in the area were kept informed through EPA Region 6 and ITEC. *Adam Adams, 214-665-2779*

**Delaware Drum:** EPA assessed 22 drums and containers located in the Delaware Nation Economic Development Authority Greentech Center. EPA disposed of one 5-gallon bucket and two 55-gallon drums that were determined to be RCRA characteristic hazardous wastes based on corrosivity. This site was completed September 2015. *Brandi Todd 214-665-2233*

**Jackpile-Paguate Uranium Mine:** Superfund staff will be meeting with the Laguna Pueblo Council on March 18, 2016, to discuss the April 6, Community Kick-Off Meeting. The purpose for meeting with the Council will be to present the information EPA will be sharing with the community on April 6<sup>th</sup>, regarding the start of a Remedial Investigation/Feasibility Study (RI/FS). EPA tribal program representatives expect to be at the April 6<sup>th</sup> Community meeting. A general technical overview of the Superfund process will be shared with the Council and the Community. Information Guide folders will be provided to kick-off the RI/FS start and to encourage community participation. *Petra Sanchez, 214-665-6686*

**Quapaw Tribe:** The Quapaw Tribe Environmental Office is conducting a pilot project using soil amendments which have been applied to impacted soils to reduce the bioavailability of the metals of concern. The application of technical performance measures and long-term monitoring will determine whether the amendments are functioning as designed. The Tribe has performed the remedial action at another portion of tribal lands known as Beaver Creek North (CP060) and is currently performing the remedial action at Distal 13. *Rafael Casanova 214-665-7437*

**Quapaw Tribe:** An amendment to the cooperative agreement with the Quapaw Tribe is currently in process for the amount of \$3,700,000. This award is to fund the Tribe to remove contamination from the Restricted Land Area of Tar Creek, Distal 13. *Kathy Gibson 214-665-7196*

**Tar Creek:** On February 24 and 25, 2016, the EPA met with all stakeholders to discuss issues related to OU5 and OU4, respectively. The EPA continues to coordinate with the tribal groups interested in the Tar Creek Site through periodic meetings and conference calls that provide

updates and discussion opportunities related to progress and schedule for remedial action (OU2 and OU4) and Remedial Investigation (OU5). The interested parties include ITEC, Cherokee Nation, Eastern Shawnee, Miami Tribe, Modoc tribe, Quapaw Tribe, Ottawa Tribe, Peoria Tribe, Seneca-Cayuga Tribe, Shawnee Tribe, Wyandotte Tribe, and BIA. The next scheduled stakeholder conference call is scheduled for March 2016. **Rafael Casanova 214-665-7437**

**Wilcox Oil Company:** Katrina Higgins-Coltrain (Remedial Project Manager) and Todd Downham (Oklahoma Department of Environmental Quality Project Manager) continue to coordinate with the tribal groups interested in the Wilcox Site. The ITEC, Sac and Fox Nation, Muscogee (Creek) Nation, Cherokee Nation, BIA, and IHS, are interested in the site and participate in the site meetings and visits. Update meetings and discussion related to the Remedial Investigation/Feasibility Study process, current status and progress, and schedule of future activities were held in April and March 2015. A meeting was held August 26, 2015, to discuss and identify areas of cultural and historical significance that could be impacted by site related activities. On September 24, 2015, a follow-up site visit with the Muscogee (Creek) Nation cultural and historical preservation departments and Sac and Fox Nation was conducted. In addition, interested persons visited the site during field work conducted December 2015. Currently EPA is working to review field data from September and December 2015 and develop site plans that are tentatively scheduled to be shared with the team in April 2016. Also, the April/May timeframe is tentative for the next open house with the community. **Katrina Higgins-Coltrain 214-665-8143**

**NM Abandoned Uranium Mines - Tronox Settlement:** Tronox was created in 2005 as a spinout of Kerr McGee and was saddled with massive environmental and legal liabilities. Tronox filed bankruptcy and filed a fraudulent conveyance suit against Kerr McGee and its successor, Anadarko. The U.S. Department of Justice finalized a \$5.2 billion settlement with Kerr McGee and Anadarko on January 23, 2015. EPA received \$985 million of the settlement to address legacy human health and environmental impacts at uranium mine sites in NM and on the Navajo Nation. The \$985 million will be used to fund the cleanup of approximately 50 abandoned uranium mines in NM and on the Navajo Nation. Of the 50 mines, 22 mines in NM were identified in the Tronox Settlement. EPA Regions 6 and 9, along with the Navajo Nation EPA and New Mexico Environmental Department (NMED) and New Mexico Energy, Minerals and Natural Resources Department (NMEMNRD) have established quarterly meetings to identify project activities and goals at the abandoned uranium mines. Investigations into the impacts on groundwater from legacy mining and milling with the potential risk to residents using groundwater as their domestic water supply continue as EPA Region 6 develops a conceptual site model tentatively scheduled to be released in FY18. Drilling of additional monitoring wells to assess water quality in the alluvial and bedrock aquifers began in July 2015 and was completed in February 2016. A non-time critical removal assessment on the Tronox NAUM East Geographic Subarea and associated areas in Ambrosia Lake began in July 2015 and is projected to be completed in completed in March. The data will be utilized to prepare an EE/CA Report for the site. A meeting will be held in March with Region 6, Region 9, Navajo Nation, NMED, and NMEMNRD to discuss priorities for FY 2016. **Chris Villarreal 214-665-6758, Kevin Shade 214-665-2708, Jon Rinehart 214-665-6789, Warren Zehner 281-983-2229**

**Grants Mining District – Draft Five-Year Plan:** On October 9, 2015, Region 6 released the draft 2015-2020 Grants Mining District Five-Year Plan to the public, tribal, state and federal agencies for review and input. An offer of consultation was also extended to the Pueblo of Acoma and the Pueblo of Laguna on the draft plan. The draft plan can be downloaded from the Grants Mining District webpage (<http://www2.epa.gov/grants-mining-district>). Input was requested on the draft plan by November 13, 2015. The final Five-Year Plan is expected to be released in March 2016. **Kevin Shade 214-665-2708, LaDonna Turner 214-665-6666**

## **BROWNFIELDS**

### **128A Tribal Response Program Updates:**

- Region 6 received FY16 Funding Requests from four FY16 128a Tribal Response Programs. All four requests were from existing 128a Tribal Response Programs: The Inter-Tribal Environmental Council (ITEC), Eight Northern Indian Pueblo Councils (ENIPC), Absentee Shawnee Tribe and the Kickapoo Tribe of Oklahoma. The national budget for 128a funding remained at \$47.7M this year.
- The Region 6 Brownfields Program is partnering with the Region 6 GAP program to identify areas to better coordinate to promote grant efficiencies and effectiveness.
- The Tribal Lands and Environment Forum will be held in Uncasville, CT August 15-18.

ITEC administers a 128a Tribal Response Program, building capacity since 2000. ITEC provides outreach to its 41 member tribes by traveling to the tribes' offices and informing them of what the Brownfields Program is, how it can be used and the services ITEC can provide (such as training, inventories and site assessments). ITEC's Brownfields Program has a page on the ITEC website that also provides information about Brownfields, including services offered and an inventory of brownfields sites that have been addressed with its program. ITEC emails member tribes information about the Brownfields Program. During the Tribal Environmental Summit and ITEC Conference, ITEC's Brownfields Team has a booth to promote their Brownfields Program and answer questions any tribe might have about potential Brownfields Sites.

ITEC recently began the process of rewriting, amending, editing, and ultimately developing a new set of environmental statutes and regulations to assist with implementation of its Brownfields Program. ITEC is considering addressing vapor encroachment through its Brownfields Program. ITEC is also providing ASTM training to member tribes and hosts and annual Environmental Summit.

Recent results from past assessment and technical assistance provided by ITEC include:

- The Delaware Nation Drum site has been referred to the EPA Removal program for a limited cleanup action. While conducting Phase I Environmental Assessment activities, ITEC encountered a room of unlabeled drums, many of which were unlabeled and appeared to be leaking. ITEC contacted EPA for assistance. The removal activities are currently underway. **Amber Howard 214-665-3172**

**Absentee Shawnee Tribe:** The Absentee Shawnee Tribe (AST) reopened its 128a Tribal Response Program in 2013. AST continues to promote sustainable and livable rural communities



by establishing, maintaining and enhancing our Tribal Brownfield Response Program to protect disproportionately impacted low-income, minority, and our Tribal community. The Tribe continues to use the Tribal Response Program to preserve land and prevent land contamination by preparing for and responding to accidental or intentional releases of contaminants; ensuring clean up and restoration of polluted sites for reuse; reducing waste generation; and reviewing the Tribal Solid Waste Code for necessary updates to ensure proper management of waste and petroleum products. The AST Tribal Response Program has partnered with the Oklahoma Department of Environmental Quality (ODEQ) and the Inter-Tribal Environmental Council's Brownfields Program to secure Phase II site assessments and Certificates of Completion to further the reuse of Brownfields properties.

Current and upcoming environmental projects overseen by AST are:

- Walls Building – AST completed a Phase I and ODEQ has completed a Phase II Targeted Brownfield Assessment on a former TG&Y retail center and automotive service center located in Tecumseh, OK.
- Roadside Motel – AST completed a Phase I on a 21-room motel with living quarters and an office. The building contains asbestos. AST is partnering with ODEQ to secure a Phase II assessment of the property.
- Youth Camp – AST cleaned up a 5 acre open dump site near Norman, OK. The site is part of a 200 acre wooded property planned for the development of a Tribal Youth Camp, funded by the HUD-ICBG Program.
- Housing Authority property - The AST is currently working with the Absentee Shawnee Housing Authority (ASHA) on a U.S. Department of Housing and Urban Development (HUD) Housing project. AST completed the NEPA Environmental Assessment, Finding of No Significant Impact and Request for Release of Funds documents. The AST is assisting the ASHA with the removal of 2 underground storage tanks and the capping a water well on the proposed housing addition site. The ASHA plans for the construction of 25 low income housing units located on the proposed site. *Amber Howard 214-665-3172*

**ENIPC:** The ENIPC administers a 128a Tribal Response Program, building capacity since 2010. ENIPC finalized the Picuris Pueblo Phase I ESA on closed gym. In FY 2015, site specific work completed by ENIPC included:

- Phase I ESA on private property (agriculture land) for the Pojoaque Pueblo that the Pueblo will acquire for conversion of acquired property into tribal trust through Bureau of Indian Affairs (BIA).
- Phase I ESA on abandoned gravel mine on Cochiti Pueblo.
- After receiving petroleum eligibility determination for closed gas station from NMED, ENIPC is in the process of completing Phase I ESA on closed gas station for Pojoaque – that will also be converted to tribal trust through the BIA.

ENIPC hosted ASTM Phase I and II ESA training for tribes in New Mexico in March 2015. ENIPC will work with ASTM to develop an interview guide for tribes to gather information about uses and operations on brownfields properties on tribal lands through interviews required by ASTM for Phase I ESAs. ENIPC also hosted HAZWOPER training for tribes in north New Mexico in FY 2015. Additionally, ENIPC staff completed mold, lead-based paint and asbestos

abatement inspector training in FY 2015. With the XRF equipment purchase in FY 2014, ENIPC will be able to assist tribes in New Mexico with screening for lead-based paint using XRF on tribal structures or “loaning” XRF equipment to tribes to undertake screening.

Results from past assessment and technical assistance provided by ENIPC include:

- Acoma Pueblo – McCarty School burnt building materials properly collected and disposed using GAP funding. Acoma was able to move forward with securing GAP funding to address McCarty School burnt building materials after ENIPC’s Phase I ESA.
- Picuris Pueblo – Gym roof was repaired by Picuris after securing USDA funding of \$70,000. This included molded batting material identified in Phase I ESA provided by ENIPC. The gym is now and operational. ***Amber Howard 214-665-3172***

**Kickapoo Tribe of Oklahoma:** The Kickapoo Tribe of Oklahoma received FY16 128a Tribal Response Program funding. This is the Tribe’s first request for 128a program assistance to develop a Tribal Response Program. With the addition of a 128(a) program, the Kickapoo Tribe will complement existing services by the following goals:

- Develop a brownfields site inventory on tribal lands
- Strengthen the Tribe’s capacity to respond to contaminated sites
- Foster public participation and awareness through outreach and education
- Develop cleanup standards applicable to brownfields projects

***Amber Howard 214-665-3172***

### **BROWNFIELDS ASSESSMENT ACTIVITIES:**

**ENIPC:** Gave tour of Valmora tract (70-acres) to EPA staff (Karen Peycke and LaDonna Turner) and NMED staff (Ali Fumall and Rebecca Cook) on March 8, 2016. EPA suggested inventorying salvageable contraction and architectural materials out of the 11 buildings on Valmora tract using Deconstruction Tool designed under Land Revitalization. Materials inside of buildings that are potentially salvageable are vigas, brick, Saltillo floor tile, decorative Mexican tile. ***Karen Peycke 214-665-7273***

#### **Laguna Pueblo:**

No new information regarding Laguna Pueblo “school bus barn” site in first two quarters of FY 2016. ***Karen Peycke 214-665-7273***

**Zuni Pueblo:** NMED undertook cleanup activities at closed Malco gas station at request and on behalf of Zuni Pueblo in FY 2016. ***Karen Peycke 214-665-7273***

**Santa Clara Pueblo:** Santa Clara Pueblo hired contractor to abate asbestos in the judicial building but contractor discovered more asbestos within walls of building that was originally projected in NMED’s Phase I ESA/Asbestos & Lead-based Paint Survey. EPA approached NMED to request additional assistance with survey and abatement plan for remaining asbestos in judicial building on March 9, 2016, on behalf of Santa Clara Pueblo. Additionally, NMED offered potential financial assistance with abatement costs through the NMED Brownfields RLF. Santa Clara planned to request assistance from BIA for abatement and construction of new judicial complex on March 10, 2016.

Santa Clara Pueblo expressed interest in requesting a no further action letter from Superfund Site Assessment for the Bridge Radiator Shop in Espanola, NM on March 7, 2016. Upon issuance of Superfund Site Assessment no further action letter, Brownfields assistance can be offered to Santa Clara Pueblo in the form of environmental site assessment – Phase I and II ESA. Santa Clara Pueblo will evaluate what the reuse options are for Bridge Radiator Shop.

***Karen Peycke 214-665-7273***

**Taos Pueblo:** ENIPC is completing an Analysis for Brownfields Cleanup Alternatives for Taos Community and Health Services Building and former doctor office/residence burnt structure. EPA Brownfields will complete a cleanup plan for this site and include an option (estimated costs) to address septic tank fields by April 2016. NMED will assist with cleanup on behalf of Taos Pueblo through NMED Brownfields RLF upon receipt of ABCA and cleanup plan.

***Karen Peycke 214-665-7273***

**Santa Domingo Pueblo:** No new information about CC Housing Site in first two quarters of FY 2016. ***Karen Peycke 214-665-7273***

**Cochiti Pueblo:** Region 6 nominated Cochiti Pueblo as a “Making a Difference to Communities” community for Green Infrastructure in FY 2015.

Cochiti Pueblo started working with EPA, NMED, BIA and Pena Blanca Water Authority to address the potential impacts from abandoned Cochiti Gravel Mine on area including drinking water well located in Pena Blanca but adjacent to mine in August 2013. EPA Brownfields Program coordinated with Emergency Response Branch, Tribal Office Site Assessment Section within EPA Region 6 and outside of EPA with NMED’s Drinking Water Bureau and NMED’s Brownfields Program to identify resources available to assist Cochiti Pueblo with identifying and confirming impacts from abandoned mine operations. The EPA Targeted Brownfields Assessment Program set aside funding to undertake a Phase I and II ESA in FY 2014. NMED’s Drinking Water Bureau is working with Pena Blanca Water Authority to develop a second source for drinking water well in area and noted that Pena Blanca drinking water well will be sampled in 2014. Note, Cochiti Pueblo governor office is a one year term, the new Governor entered office in January 2014 and a new Governor will enter office in January 2015. EPA TBA Program received requests for Phase I and II ESA at the abandoned gravel mine in February 2014. ENIPC finalized Phase I ESA on Cochiti’s abandoned gravel. EPA TBA Program completed soil gas survey of the mine staging area and sampled the single source drinking water well operated by Pena Blanca Water Board – adjacent to staging area of abandoned gravel mine. In September 2015, the Cochiti Pueblo Council and Governor were briefed about Targeted Brownfields Assessment assistance completed (soil gas survey and sample of drinking water well) and follow-up Phase II ESA planned for the Cochiti’s abandoned gravel mine planned. Note – the drinking water well sample results did not indicate contamination of water from heavy metals or petroleum products.

Using the completed soil gas survey results, EPA briefed the Cochiti Pueblo staff and consultant; and the Pena Blanca Water Board on survey results of the Cochiti’s abandoned gravel mine staging area. At request of Cochiti Pueblo and Pena Blanca Water Board, EPA provided sample

approach for next Phase II ESA to sample surface and sub-surface soils of the mine staging area for comments/input from Cochiti Pueblo and Pena Blanca Water Board. Additionally, NMED asked to split sub-surface soil sampling with EPA to collect data at a difference depth. EPA will also extend surface and sub-surface soil sampling to the perimeter of the mine in the Phase II ESA sampling plan. EPA incorporated Cochiti Pueblo, Pena Blanca Water Board and NMED comments to sample approach and will complete Phase II ESA sampling plan by November 2015.

NMED has offered to sample private water wells located on residences that are adjacent to Cochiti's abandoned gravel mine. Additionally, NMED has offered to undertake quarterly sampling of single source drinking water well at the request of the Pena Blanca Water Board – as follow-up to EPA's TBA sampling of well.

EPA coordinated with Cochiti Pueblo, Pena Blanca Drinking Water Board, Rural Waters (non-profit) and NMED to design sampling plan to confirm presence of solvents, hydrocarbons and heavy metals in surface soils, below surface ground soils (6 feet interval NMED will sample and 12 feet interval EPA TBA contractor will sample) for a follow-up Phase II ESA. The field work for the follow-up Phase II ESA will start the week of March 14, 2016. Next steps will be to go over follow-up Phase II ESA results with Cochiti Pueblo, Pena Blanca Water Board through a conference call. Additionally, Region 6 will write a scope of work for Land Revitalization contract to provide visioning/planning assistance on abandoned gravel mine. ***Karen Peycke 214-665-7273***

**Pueblo of Isleta:** EPA, ENIPC and NMED visited shooting range with Pueblo of Isleta on March 7, 2016. The Pueblo of Isleta expressed concerns about lead levels in shooting range. ENIPC offered to screen soils in shooting range to confirm presence and concentration levels of lead in shooting range. The Pueblo of Isleta will follow with spot cleanup of hot spots identified through XRF screening by ENIPC. The shooting range is used by hunters of Pueblo of Isleta and is an important tribal resource for Pueblo of Isleta. ***Karen Peycke 214-665-7273***

## **LAND REVITALIZATION**

**Choctaw Nations Promise Zone:** Region 6 is coordinating with Choctaw Nation to host a Brownfields 101 webinar in FY 2016. ***Karen Peycke 214-665-7273***

**Deconstruction Tools:** Provided Deconstruction Tools to Acoma and Taos Pueblos for consideration and application when evaluating demolition of obsolete structures on tribal lands in April 2014. ***Karen Peycke 214-665-7273***

## **TRIBAL TRAINING**

**Proposed Rule to Add a Subsurface Intrusion Component to the HRS:** The Office of Federal Register has confirmed an FR publication date of Monday, February 29, 2016. Publication will start the clock on the 60-day public comment period which should end approximately April 29, 2016. As part of outreach efforts for the proposed rule, OSRTI held a formal tribal consultation

webinar on February 16, 2016, which attracted approximately 3 tribal participants. ***Brenda Cook 214-665-7436***

Brownfields Grant Writing Workshop held in Addison, TX on October 6-8, 2015 was open to the public. Santa Domingo Pueblo and ENIPC sent staff to workshop. ***Karen Peycke 214-665-7273***

## Office of Environmental Justice, Tribal and International Affairs

### OFFICE AND STAFF UPDATE

Salina Gomez has joined the Region's Indian Environmental General Assistance Program (GAP) project officer team at OEJTIA. EPA Region 6 welcomes Salina to her new position!

### TRIBAL FUNDING

**Region 6 General Assistance Program (GAP):** OEJTIA has been allocated \$7,508,000 in FY 16 Indian Environmental General Assistance Program (GAP) funding. This year OEJTIA expects to award GAP grants to sixty-six tribal partners. GAP project officers will be contacting tribal partners to begin grant negotiations. **Randy Gee, 214-665-8355.**

### EPA-TRIBAL ENVIRONMENTAL PLANS

**ETEP Update:** OEJTIA finalized completion of twenty-two EPA-Tribal Environmental Plans (ETEPs) with tribal partners in FY 15. As outlined in the May 15, 2013 GAP guidance, ETEPs are planning documents that reflect intermediate and long-term goals for developing, establishing, and implementing tribal environmental protection programs. OEJTIA will finalize completion of seventeen ETEPs with tribal partners in FY 16. **Randy Gee, 214-665-8355.**

### TRIBAL CONSULTATION AND COORDINATION

**EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights:** On February 22, 2016, EPA Administrator Gina McCarthy issued the *EPA Policy for Consultation and Coordination with Indian Tribes; Guidance for Discussing Tribal Treaty Rights* (Guidance)

EPA recognizes the importance of honoring tribal treaty rights. This Guidance is designed to enhance EPA's consultation efforts in situations where tribal treaty rights are most likely to be relevant to a proposed EPA action.

The Guidance provides assistance on implementing the *EPA Policy on Consultation and Coordination with Indian Tribes* when tribal treaty rights relating to natural resources may exist in a specific geographic area that is the focus of a proposed EPA decision or action. In these instances, during consultation with federally recognized tribes, EPA will seek to obtain tribal treaty rights information in accordance with this draft Guidance. EPA will subsequently consider treaty rights information obtained to help ensure that EPA's actions do not conflict with treaty rights, and to help ensure that EPA is fully informed when it seeks to implement its programs to further protect treaty rights and resources when it has discretion to do so. **Dona Harris, 202-564-6633, Tina Arnold, 214-665-2709, Randy Gee, 214-665-8355**



## **ENVIRONMENTAL JUSTICE UPDATE**

**Environmental Justice (EJ) Training Workshop – Oklahoma.** Planning is continuing for the Oklahoma Environmental Justice (EJ) Training Workshop to be held on June 13-15 in Oklahoma City. Objectives of the workshop are to bring together grassroots organizations, partners, local officials and government entities to better understand today's environmental justice challenges. This workshop will foster a collaborative process to draft a Region 6 EJ State Action Plan for Oklahoma that addresses statewide EJ priorities. *Israel Anderson, 214-665-3138, Mark Allen, 214-665-2719*

**EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples:** OEJTIA continues to work with tribal partners and other stakeholders in the implementation of the *EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples*. *Randy Gee, 214-665-8355*

**EJ 2020 Action Agenda:** OEJTIA is working with other EPA programs and offices to finalize the draft *EJ 2020 Action Agenda* (EJ 2020). EJ 2020 is EPA's five year strategy to advance environmental justice through EPA's programs, policies, and activities, and support the cross-agency strategy on making a visible difference in environmentally overburdened, underserved, and economically distressed communities, including tribal and other indigenous communities. OEJTIA is part of the workgroup finalizing the Tribal and Indigenous Peoples element of EJ 2020. Tribal consultation is expected to begin in mid-2016. *Randy Gee, 214-665-8355*

## **BORDER UPDATE**

**U.S.-Mexico Border 2020 Grant- Ysleta del Sur Pueblo Community Collection Center:** Ysleta del Sur Pueblo (YSDP) received \$66,470 to create a collection center to collect recyclables, used tires, electronic waste, oils, and antifreeze. YSDP has contracted with firms for proper disposal of these items. Preliminary data is showing the number of pounds collected in the Pueblo Community in the past 14 months is 5500 lbs. of E-Waste, and 177 tires. The YSDP Environmental & Natural Resources Department (ENRD) offers services to the 9 Pueblo government buildings and the Pa Kitu (Pumpkin) village and providing amnesty and clean-up events. The ENRD hired a coordinator and technician who are now trained in waste management and soon to have Hazardous Operators training. Community engagement has increased through greater participation in the recycling program. *Debra Tellez, 915-533-7273*

## Management Division

### INFORMATION SHARING

#### GRANT AWARD TIMELINESS METRIC

The Environmental Protection Agency has developed a Fiscal Year 2016 metric for grant award timeliness. The goals of this metric are to: 1) ensure that timely progress is made on environmental and public health priorities; 2) spread grant workload across the fiscal year; and 3) meet stakeholder expectations that EPA use funds as promptly as possible.

The agency's goal is to exercise best efforts to have 50% of FY 2016 non-competitive grant actions completed by the end of the third quarter (this represents approximately a 5% increase over the average performance level for the period FY 2011-FY 2015).

Over the next four fiscal years, EPA Programs are expected to make continued progress in accelerating grant obligations and reducing fourth quarter grant workload. This includes making necessary adjustments to business processes that build on the procedures currently in place to expedite grant awards. The EPA Region 6 point of contact is ***Donna Miller, 214-665-8093***.

#### BUDGET UPDATE

On December 18, 2015, the President signed the "Consolidated Appropriations Act, 2016" (Public Law 114-113) into law which provided the U.S. Environmental Protection Agency with \$8,179,877,000 in appropriated funds. This is an overall 40 million increase over the FY15's appropriated level. The Bill contains a \$40 million rescission of unobligated balances from the State and Tribal Assistance Grants account. The EPA Office of Budget will issue separate guidance regarding the execution of the rescission. The EPA Region 6 point of contact is ***John Spelman, 214-665-7425***.

#### EPA COLLABORATION WITH THE GENERAL SERVICES ADMINISTRATION (GSA) CONTINUES

The regional coordination between EPA and GSA, mandated as a result of Executive Order 13693 on *Planning for Federal Sustainability in the Next Decade* (March 2015), continues with bi-monthly meetings of representatives from DFW Federal agencies. Our invitation to other representatives from Federal Executives Boards within the regional states of EPA Region 6, which corresponds to GSA Region 7, continues to be shared. Through these meetings, the Interagency Regional Workgroup is providing guidance and training for federal agencies to address sustainable operations of federal fleet vehicles; water resource management; climate change preparedness in coordination with interested state, local, and tribal communities; and collective procurement of clean energy. A teleconference line is available, and we are hoping to begin webinar presentations for those who would like more active participation. Region 6 Tribes are invited to participate. The EPA Region 6 point of contact is ***Julia M. Alderete, 214-665-7321***